

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company)	
)	00-0259
Petition for Expedited Approval of)	
Implementation of a Market-Based)	
Alternative Tariff, to become effective)	
on or before May, 2000, pursuant to Article)	
IX and Section 16-112 of the Public)	(Cons.)
Utilities Act.)	
)	
Central Illinois Public Service Company)	
Union Electric Company)	00-0395
)	
Petition for Approval of Revisions to)	
Market Value Tariff, Rider MV)	
)	
Illinois Power Company)	
)	
Proposed New Rider MVI and Revisions)	00-0461
Revisions to Rider TC)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, January 12, 2001, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed **People of the State of Illinois' Brief on Exceptions** via e-docket to the Chief Clerk of the Illinois Commission at 527 East Capitol Avenue, Springfield, Illinois 62794-9280.

Mark G. Kaminski
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Mark G. Kaminski, Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list by United States Mail, first class postage prepaid on January 11, 2001, and by electronic mail to all active parties.

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**PEOPLE OF THE STATE OF ILLINOIS’
EXCEPTIONS TO THE HEARING EXAMINER’S PROPOSED ORDER**

NOW COMES the People of the State of Illinois, by James E. Ryan, Attorney General of Illinois (herein after “the People”), and file their Exceptions to the Hearing Examiner’s Proposed Order (“HEPO”) in the above-entitled matter, issued on December 22, 2000.

Exception No. 1

To allay concerns regarding thinness of the Into ComEd trading hub, and in the interest of promoting uniformity, the People take exception to the HEPO allowing Commonwealth Edison (“ComEd”), under any circumstances, to employ data from the Into-ComEd hub to determine market value for the Customer Transition Charge (“CTC”) and the Power Purchase Option

(“PPO”).

ComEd’s proposal determines market value using Into ComEd hub trading data reported by two on-line data sources, Altrade and Bloomberg PowerMatch. Bloomberg PowerMatch recently discontinued reporting Into ComEd pricing information because of a lack of volume in the Into ComEd market. *See*, People’s Reply Brief, p. 2, n. 2, citing ComEd letter of November 22, 2000. This discontinuance has reduced ComEd’s available Into ComEd data sources to a single service, Altrade. The Into ComEd hub has already drawn criticism for being significantly thinner than the alternative Into CINergy hub. *See generally*, Zuraski Direct, Staff Ex. 3.0, p.25, line 480. Further reducing, to a single source, the available data used to determine market value for ComEd customers only compounds this thinness. Indeed, Staff witness Zuraski was sufficiently concerned about both of the reporting services to advocate Staff oversight “to detect activity that might be related to manipulation of the index or to determine if these marketplaces show signs of becoming as virtually extinct as the marketplace for CINergy futures listed on NYMEX.”¹ Staff Ex. 3.0, p. 30, line 586. Staff witness Zuraski’s concern is especially valid in light of Bloomberg’s recent deletion of the Into ComEd hub.

Illinois Power’s (hereafter “IP”) and Ameren’s proposed market value tariffs are based on Into CINergy pricing information. The Into CINergy hub is a more robust market than the Into ComEd hub. *See generally*, Zuraski Direct, Staff Ex. 3.0, p.25, line 480. More importantly, both Altrade and Bloomberg currently report Into CINergy pricing information. IP and Ameren will

¹ComEd advocated using in its 1999 market value proposal. *See Commonwealth Edison Company: Petition for approval of an alternative methodology for calculating market values pursuant to Article IX and Section 16-112 of the Public Utilities Act*, Order of August 24, 1999, 1999 Ill. PUC LEXIS 599, 38-39 (ICC Docket No. 99-0171).

have two data sources to determine the market value. There is no good reason to limit ComEd to a single data source.

The People's concerns regarding thinness are heightened by Bloomberg's decision to discontinue reporting the Into ComEd hub's pricing data. The Commission must not allow the market value for electric power and energy to be determined by data from a single inferior data source. The Commission should require ComEd to incorporate the more robust Into CINergy hub into its market value tariff. This resolution also has the incidental benefit of having all of the utilities using a single pricing hub, thereby simplifying entry of competitors into all Illinois power and energy markets.

Proposed Language for Exception No. 1:

The tenth and eleventh paragraph under **V. Commission Conclusions/ A. Methodology for Determining Prices Under Market Index Proposals** should be modified as follows:

With regard to possible manipulation of the Into ComEd exchange, however, the record shows that there have been a very limited number of actual transactions in the past and that ComEd has been a party to a large percentage of both actual transactions and bids and offers. Although there is no indication of any manipulation to date, ComEd recently informed the Commission and parties that Bloomberg has removed the Into ComEd trading hub from its PowerMatch reporting service. This removal only compounds the Commission's concerns regarding the thinness and lack of transparency addressed above. The Commission cannot approve a market value tariff based on a single reporting service's pricing data in the thin and relatively opaque Into ComEd trading hub. the Commission believes that NewEnergy has proposed a reasonable method to mitigate concerns over potential manipulation of the Into ComEd exchange, which is to use offers rather than the midpoint of bids and offers in the data hierarchy when prices for actual transactions are unavailable. This approach reduces any potential economic incentive on ComEd's part to manipulate the Into ComEd exchange. Furthermore, the Commission believes this proposal will give ComEd, by far the largest participant in the Into ComEd exchange, an incentive to actively monitor activity on electronic exchange platforms for evidence of manipulation by other market participants. Therefore, as

a condition of approving ComEd's market index tariff, the Commission proposes that ComEd modify its data hierarchy to include only offer prices rather than the midpoint of bids and offers when prices for actual transactions are unavailable.

~~The Commission is aware that pursuant to Section 16-112(m) of the Act, any of these three utilities with MVI proposals before the Commission may choose to reject Commission proposed modifications to a market index based tariff, choosing instead to utilize the NFF approach to establishing market values. As a result, if ComEd is unwilling to accept the Commission's proposed modification to its data hierarchy, the Commission alternatively proposes that ComEd modify its tariffs to provide for use of the Into Cinergy exchange for developing on-peak market values.~~

Exception No. 2

The People take exception to the absence of any language in the HEPO that would allow for Commission consideration, prior to 2003, of tariff modifications arising from the workshops discussed on page 111 of the HEPO. The People believe that the suggested "sunset provision" has merit, but that it does not appear to provide for any changes to the utilities' market value tariffs to take effect until after the May 2004 billing period. HEPO at 111. The People note that the HEPO found the reasons for "an optionality adjustment were well articulated by New Energy and Staff witnesses". HEPO at 116. However, the HEPO ultimately found that no method of quantifying this adjustment could be adequately supported by the record. *See id.* While a Commission order may only be based on record evidence, the HEPO's deferral of considering all new adjustments until the 2004 "sunset" is too long to have admittedly incomplete tariffs in effect.

The HEPO expresses an apparent willingness to consider an optionality adjustment, provided it could be quantified. HEPO at 117. It is conceivable that the aforementioned workshops may generate reasonable, quantifiable adjustments or other modifications prior to 2003, which may be presented to the Commission for formal approval. Therefore, the HEPO

should include language allowing for the possibility of an earlier presentation of quantifiable adjustments or other modifications.

Proposed Language for Exception No. 2:

Last paragraph under **V. Commission Conclusions/ A. Introduction and Overview** should be modified as follows:

This sunset provision will allow the utilities to implement market index tariffs, as modified by the Commission's proposals herein, for a relatively lengthy period of time. However, it will also allow the utilities, Staff and other interested parties to gain significant experience with the different aspects of the various tariffs and, perhaps, determine which are superior or problematic. While allowing the tariffs approved herein to be effective for a reasonably lengthy period of time, this sunset provision also provides for a review at a stage in Illinois' restructuring process that will allow the Commission to correct serious problems that are observed and for these corrections to be in place for a meaningful period of time. The Commission believes this provision will also serve as an incentive for utilities and other parties to work together, in workshops or other forums, to develop additional improvements to the MVI programs. **In the event that the workshops or other forums generate adjustments or other modifications by consensus of the parties prior to the January 1, 2003 date for filing new market value tariffs, those adjustments or modifications may be presented to the Commission as generated.**

Exception No. 3

The People take exception to the HEPO's incorrect description of the Staff's and the People's positions regarding basis adjustments for Into CINergy exchange data. The HEPO describes the AG position as recommending the multiplicative basis adjustment. HEPO at 112. The AG "support[ed] Staff witness Christ's evaluation and recommendation that no basis adjustment is necessary." Initial Brief of the People at 10-11. The HEPO stated that "Staff recommends that the Commission condition approval of the use of the Into CINergy exchange

data with either no basis adjustment or with a multiplicative basis adjustment.” HEPO at 112.

Staff’s position, as articulated in its Initial Brief was:

Staff witness Christ did not recommend that any Illinois utility make basis adjustments in order to estimate the on-peak forward prices in the electric market in which they “operate.” However, he concluded that, if a basis adjustment were to be made, the “best” basis adjustment, among the four he examined, is the multiplicative basis adjustment.

Initial Brief of Staff at 25-26. Therefore, the Order should be revised, as set out below, to reflect the stated stances of the People and Staff .

Proposed Language for Exception No. 3:

The seventh paragraph under **V. Commission Conclusions/ A. Methodology for Determining Prices Under Market Index Proposals** should be modified as follows:

Because it proposes to use the Into ComEd exchange, ComEd’s proposal does not include a **basis adjustment**. Basis adjustments are intended to adjust for price differences attributable solely to location. Ameren proposes to use an additive basis adjustment while IP proposes to use a multiplicative basis adjustment to make a locational adjustment to the Into Cinergy exchange data. ~~Both NewEnergy and the AG recommends~~ the application of a multiplicative basis adjustment to the Into Cinergy exchange data. IIEC recommends that IP be required to update its basis adjustment more frequently than annually, as IP proposes. Staff ~~and the AG recommends~~ that the Commission condition approval of the use of the Into Cinergy exchange data with ~~either~~ no basis adjustment. **The Staff further recommends that if some manner of basis adjustment is found necessary, the best basis adjustment is or with a multiplicative basis adjustment.**

WHEREFORE, for the reasons set forth above, the People respectfully request that the Commission modify the Hearing Examiner's Proposed Order in accordance with the arguments made above and adopt the Proposed Language contained herein.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS
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